Supreme Court, U.S.
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No. 88-625

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

METROMEDIA, INC., *et al.*,

Petitioners,

v.

APRIL ENTERPRISES, INC.,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

In its opinion in *Browning-Ferris Industries of Vermont, Inc.* v. *Kelco Disposal, Inc.*, No. 88-556 (June 26, 1989), the Court expressly reserved for another day the question whether the Due Process Clause of the Fourteenth Amendment "acts as a check on undue jury discretion to award punitive damages in the absence of any statutory limit." Slip op., at 18. That precise question, not mentioned by Browning-Ferris in its Petition or in its briefs filed in the courts below, was raised in a timely manner by Metromedia at all three levels of the California court system and is squarely presented to this Court in Question No. 1 of Metromedia's Petition.

California imposes no statutory (or common law) limit on the discretion of juries to award punitive damages. Indeed, the trend in California toward increasingly extravagant awards is illustrated by this case, in which the $14,000,000 punitive portion of the verdict was not only twenty times greater than the highest punitive verdict affirmed on appeal in California through the 1970s, but was $4,000,000 greater than the amount sought by respondent in its prayer.

Shortly after this Court identified the due process issue as "important" in *Aetna Life Insurance Co.* v. *Lavoie*, 475 U.S. 813, 828-29 (1986), Metromedia asked the trial court to set aside the "open-ended punitive damage award" in this case because of the "unconstitutional nature of punitive damage[s], which can be imposed arbitrarily by a jury, under vague standards, in an amount far beyond the punishment necessary to serve any legitimate purpose." Pet. for Cert. App., at 39a-40a. In the California Court of

Appeal, Metromedia again objected on federal and state constitutional grounds to the "open-ended punitive damage award" and the violation, as a consequence, of Metromedia's "substantive due process rights . . .to adequate advance notice of the range of punishment which could be imposed for [its] conduct," citing Justice O'Connor's concurring opinion in *Bankers Life and Casualty Co.* v. *Crenshaw*, 486 U.S. ___ , ___ (1988). Pet. for Cert. App., at 56a, 57a-58a. Respondent urged the Court of Appeal to reject this contention on the ground that the California courts had "uniformly rejected" constitutional challenges to California's open-ended punitive damage system. The same issue was again raised in the Supreme Court of California, which denied review.

Respondent has filed a Supplemental Brief in which it purports to discuss the relevance of this Court's decision in *Browning-Ferris* but which primarily repeats, substantially verbatim (compare, *e.g.*, Supp. Br. of Resp., at 2-3 with Opposition to Petition, at 6-7), portions of arguments previously presented in its opposition to Metromedia's stay application and Petition. The points now raised by respondent were either anticipated and refuted in Metromedia's Petition or fully refuted in Metromedia's Reply Memorandum. Accordingly, this Supplemental Brief shall address only one point referred to in respondent's Supplemental Brief as illuminated by the opinions issued in *Browning-Ferris*.

Respondent reiterates in its Supplemental Brief its prior argument that this Court should not grant Metromedia's Petition because "*it was Metromedia itself who requested that the jury be instructed on punitive damages.*" Supp. Br. of Resp., at 2. Therefore,

respondent argues, Metromedia cannot complain about the constitutional "flaw" in California's system of unlimited punitive damages. There are several answers to this argument.

First, punitive damages were an unavoidable issue in this case under California's system which, as respondent itself has demonstrated, has been repeatedly upheld against constitutional challenge by the California courts. Metromedia's motions to eliminate punitive damages from the case were rejected, and it had no choice but to consider some form of jury instruction that was consistent with the existing system so long as there was a possibility that the trial court would send the issue of punitive damages to the jury. The governing California statute does not impose any limits on the amount of punitive damages that a jury may award, and no jury instruction can remove this flaw.

Second, that juries in California are not under any meaningful restraint, statutory or otherwise, is illustrated by the fact that the jury in this case was not constrained by respondent's prayer for punitive damages—$10,000,000—much less by any jury instruction, in determining the magnitude of the arbitrary punishment to inflict on Metromedia.

Third, the punitive damage instruction in this case was very much like the instruction in *Browning-Ferris*, accurately reflected state law and was, therefore, "scarcely better than no guidance at all." Slip op., at 2 (Brennan, J., concurring). As Justice Brennan observed, the punitive damage instruction in *Browning-Ferris* was not itself "in error; indeed, it appears to have been a correct statement of Vermont Law." *Id.*

Respondent's jury instruction argument is based upon an apparent, recently acquired misapprehension of the nature of Metromedia's due process challenge to the punitive damage award. As respondent would have it, the Due Process Clause question is whether due process "required that the jury be given an instruction which sets forth a greater level of guidance than that provided" by the instruction actually given. Supp. Br. of Resp., at 4. That, however, is not the due process question identified in the several opinions issued in *Browning-Ferris* or presented by Metromedia to the California courts and this Court in this case.

Metromedia's due process challenge is not to the punitive damage instruction. It is, rather, to what Justice Brennan described as the "deeper flaw" in the punitive damage system: "the fact that punitive damages are imposed by juries guided by little more than an admonition to do what they think is best." Slip op., at 2. *See also Bankers Life and Casualty Co.* v. *Crenshaw*, 486 U.S., at ___ (O'Connor, J., concurring). As noted above, Metromedia argued to the California courts that it had been unconstitutionally subjected to an open-ended punitive damage system. No jury instruction could have removed this unconstitutional aspect of the punishment imposed by the jury because the California legislature, in authorizing the award of punitive damages in civil actions, left the amount of punishment to be administered solely within the unbridled discretion of each jury empanelled to hear a particular case. In California, no "responsible officials had deliberated and then agreed," *Browning-Ferris*, slip op., at 2 (Brennan, J., concurring), to any range of monetary punishment

that a jury could impose in this case or in many other classes of cases in which such punishment may, by statute, be freely imposed by California juries.

At bottom, Metromedia's due process challenge is to the result reached by the jury within a *system* that is fundamentally flawed. No instruction imaginable could have cured this flawed system. Only a decision of this Court bringing to bear on the punitive damage systems of California and other "punitive damage" States the fundamental rights guaranteed by the Due Process Clause to those persons subjected to arbitrary punishment by the judicial process can cure this flawed system. *Ad hoc* and unbridled juries cannot constitutionally be empowered to decide what limits to place on punishment or to determine what amount of punishment is proportionate to the offense. Legislatures in the first instance must make such decisions, subject to the limits the Constitution, as interpreted by this Court, may impose.

June 28, 1989

Respectfully submitted,

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